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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/899,019

Applicant(s)

MILLETT ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5, 6, 8, 10, 12-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 6, 8, 10, 12-14, 15, 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holyoak (US 4,437,259) in view of Nelson et al. (US 4,890,413) and Cano (US 4,878,311).

The patent to Holyoak shows a multipurpose fishing net having a rectangular rigid frame 11, a floatation device 30, 31, 32, 45, and 46 which is the wood platform (wood is less dense than water the platform can be a floatation device) and a single ply of flexible net material 12'. Holyoak shows the frame as rectangular with opposing first and second sides 12, 13, and opposing third and fourth sides 14, 15. Holyoak shows the frame is formed of first through four lengths 12-15 of hollow tubular material and the lengths are joined to one another by four ninety degree elbows 16 as shown in Fig. 1.

The patent to Nelson shows a fishing net having four sections of foam floatation material mounted on a frame and a tether 61, 62 secured to and extending from the frame. The foam floatation is secured over the net frame as shown in Fig. 5. The patent to Cano shows a multipurpose net in Fig. 1 and 3 having a net 40 substantially planar to the frame 11. The frame has straight hollow pieces 12-15 and elbows 24-25, 34-35. the frame has buoyant urethane foam plastic material housed within the hollow

Art Unit: 3643

or chamber of the frame as disclosed in column 3, lines 57-61. In reference to claim 1, it would have been obvious to provide Holyoak with foam floatation as disclosed by Nelson to increase the buoyancy of the net. It would have further been obvious to employ the net material in substantially the same plane as the frame as shown by Cano since the location of the net frame would be determined through routine experimentation since the function is the same and absent a showing of unexpected results noting that no stated problem is solved.

3. Claims 8, 10, 12, 13, 14, 15, 17, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holyoak in view of Nelson et al.

The patents to Holyoak and Nelson show multipurpose nets as discussed above in paragraph numbered 2. In reference to claims 8 and 14, it would have been obvious to provide the multipurpose net of Holyoak with the foam floatation as shown by Nelson to increase the buoyancy of the net. In reference to claim 10, see the rejection of claim 3, above. In reference to claims 12, 13, 18, Holyoak secures the net to all four sides of the frame, but it would have been obvious to secure the net to only two sides of the frame since the function is the same and no stated problem is solved. In reference to claim 14, Holyoak shows the net material wrapped around two or more sides of the frame in Fig. 1. In reference to claim 17, Holyoak secures the net material to each of the first through fourth sides of the frame as shown in Fig. 1. In reference to claim 19, Nelson shows a flexible tether 23 secured to and extending from the frame for tethering the multipurpose fishing net.

***Response to Arguments***

4. Applicant's arguments filed Feb 14, 2005 have been fully considered but they are not persuasive. The examiner notes that Fig. 3 shows the net connected to the frame on two sides as pointed out by Applicant and hereby withdraws the objection to the Drawings. Applicant argues that only Applicant's own disclosure is used to make the combination of references used in the rejection. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. Applicant argues that the tether as recited in claims 7, 8 and 19 is attached to the frame and Nelson attaches the rope to the net. However, the net is attached to the frame and movement

Art Unit: 3643

of the tether line would move the net and inherently move the frame. When providing Holyoak with a tether, the location would be to attach the tether to the net adjacent the frame which would result in the tether being above the water line. Applicant is not specific, in reference to claim 14, as to how the net is wrapped around the sides of the frame. Holyoak wraps the net around the frame in two ways; the net is wrapped around the perimeter of the frame and also wrapped partially around the circumference of each frame piece in a direction transverse to the longitudinal axis of each frame piece.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR